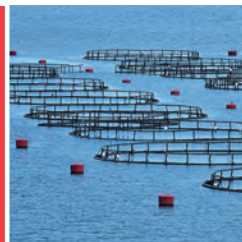


OECD Reviews of Regulatory Reform

# Chile

## Evaluation Report: Regulatory Impact Assessment

2017



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## What is the Regulatory Policy Committee?

The Regulatory Policy Committee (RPC) was created in 2009 with the underlying mission to “promote an integrated, horizontal and multidisciplinary approach to regulatory quality and seek to ensure that the OECD as a whole promotes sound regulatory policy and practices”.

In practice, the RPC has established itself as a forum for policy dialogue and with senior regulatory policy officials from Member and Partner countries. It aims to provide delegates with a valuable source of ideas, information, innovations and analysis related to ongoing challenges in regulatory policy and governance.

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## What are Regulatory Reform Reviews?

The Reviews of Regulatory Reform of the OECD are comprehensive multidisciplinary exercises that focus on regulatory policy, including the administrative and institutional arrangements for ensuring that regulations are effective and efficient. The peer-reviews are based on the principles expressed in the Recommendation of the OECD Council on Regulatory Policy and Governance that has served as framework to assess regulatory policy in more than 26 countries. For reference to the scope of the analysis in the reviews please refer to: <http://oe.cd/regpol>.

- The reviews generate detailed recommendations for policy makers to improve the country's regulatory frameworks.
- Thematic areas include; governance arrangements and administrative capacities that enable regulatory reform; regulatory management tools; review of the stock of existing regulations; regulatory compliance, enforcement and appeal processes; and, multi-level regulatory governance.
- Reviews can cover specific regulatory frameworks in one or more sectors. The specific sectors could include power, water, transportation, telecommunications, and natural resources.

The Scan versions of regulatory reform reviews focus on one particular element of regulatory governance and aim to deliver a diagnosis in a shorter period of time and in the format of a more concise output. Data collection is based on OECD surveys and complemented with a fact-finding mission.

This Scan specifically focuses on good governance to embed regulatory impact assessment in the Chilean rule-making process as compared to OECD practices and standards.

OECD Reviews of Regulatory Reform

# **Evaluation Report: Regulatory Impact Assessment**





## *Foreword*

Following the 2016 *OECD Regulatory Policy Review*, which stems from the National Agenda for Productivity, Innovation and Growth, the government of Chile issued Presidential Instructive No. 2 in March 2017 introducing the mandate to carry out regulatory impact assessments when ministries of the economic area submit a draft bill to Congress. The productivity impact assessment of the draft bill is part of the requirements that ministries submit to the Ministry of the Presidency (SEGPRES) before presenting it to Congress.

The OECD was asked by the Ministry of Economy, Development, and Tourism of Chile to assess the current institutional arrangement and practices and further recommend next steps that support the Chilean Government to reap the benefits of embedding an *ex ante* control mechanism for the rule-making process. Accordingly, the evaluation report focuses on presenting recommendations that improve the current state of play in the short term.

The report is based on answers provided by the Ministry of Economy, Development and Tourism to an OECD questionnaire, as well as various meetings and interviews with a range of Chilean agencies including the National Congress, held in May 2017 in Santiago, Chile. The report includes two sections: the assessment and recommendations, and an overview of the status of regulatory impact assessment in Chile.

## Acknowledgements

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This evaluation report was co-ordinated and drafted by Guillermo Morales. The work underlying the report benefitted from the guidance of Faisal Naru and Nick Malyshev. Contributions for the assessment of the productivity impact assessment were also provided by Delia Vazquez, Alberto Morales, Erik Perez and Lucas Heysch from the Regulatory Policy Division. Jennifer Stein co-ordinated the editorial process.

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## Acronyms and abbreviations

<b>APEC</b>	Asia-Pacific Economic Cooperation
<b>DIPRES</b>	Directorate of Budget of the Ministry of Finance
<b>EU</b>	European Union
<b>GDP</b>	Gross Domestic Product
<b>ICT</b>	Information and communication technologies
<b>MINECON</b>	Ministry of Economy, Development and Tourism
<b>MMA</b>	Ministry of Environment
<b>MP</b>	Member of Parliament
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>PIA</b>	Productivity impact assessment
<b>RIA</b>	Regulatory impact assessment
<b>SEGPRES</b>	Ministry General Secretariat of the Presidency
<b>SME</b>	Small and medium-sized enterprises
<b>SVS</b>	Superintendency of stocks and insurance



## Assessment and recommendations

The Chilean Government launched the National Agenda for Productivity, Innovation and Growth,<sup>1</sup> led by the Ministry of Economy, Development and Tourism (MINECON) which comprises regulatory reform as a driver to foster these goals. The Agenda includes, as one of the 47 measures, carrying out a Regulatory Policy Review which in turn recommends the government of Chile to make systematic use of regulatory impact assessments (RIA) to improve the effectiveness and efficiency of regulations. The recommendation went on to mention that the government of Chile should integrate the use of RIA in a co-ordinated and systematic way within the regulatory process, building on existing capacities.

The 2016 *OECD Regulatory Policy Review of Chile* includes more granularity on the implementation of RIA, including the preparation of the impact assessment early in the decision making process, before the decision to regulate has been made; the preparation of the impact assessment should be used as a tool for collecting feedback from stakeholders (and hence improving proposals and decisions). It further states that an oversight body should be established to check the quality of impact assessment, as well as giving consideration of alternative options for proposed legislation and the scope and extent of stakeholder engagement. This quality check should be mandatory and combined with a challenge function – drafting institutions should be required to revise the draft proposal if necessary.

Following the recommendation, and under the framework of the Productivity Agenda, MINECON spearheaded the issuance of Presidential Instructive No. 2 that introduces the first steps towards embedding RIA in the rule-making process. The Presidential Instructive enacts the obligation for the economic Ministries to present a productivity impact assessment (PIA) to accompany all draft bills submitted to Congress that generate regulatory impacts.

1. [www.agendaproductividad.cl/](http://www.agendaproductividad.cl/).

This section focuses on the different arrangements foreseen in both legal provisions and in practice to embed regulatory impact assessment in the rule-making process in Chile. It is the result of a review of the recently mandated PIA; process led by the Ministry of Economy, Development and Tourism in the framework of the Agenda for Productivity, Innovation and Growth. The assessment and recommendations will be categorised into the following areas: scope, process, methodology and institutional governance for embedding RIA.

## Scope

The 2015 OECD *Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015* sets forward seven possible paths to introduce RIA into public administrations. The report highlights the importance of starting with a pilot phase that includes some institutions to offer the possibility of learning from the challenges found and move gradually into the institutionalisation of RIA.

The Presidential Instructive No. 2 is a good example of a pilot phase that includes some institutions; it obliges the Ministries of the economic area that generate regulatory impacts to carry out a PIA for all draft bills initiated in the executive branch of government. The nine Ministries included in the obligation to carry out PIAs are the following:

- Ministry of Agriculture
- Ministry of Energy
- Ministry of Environment
- Ministry of Labour
- Ministry of Economy, Development and Tourism
- Ministry of Public Works
- Ministry of Mining
- Ministry of Transport
- Ministry of Finance.

The productivity impact assessments are being carried out for primary laws initiated in the economic area of the Executive power. In other words, non-economic Ministries do not have to issue any kind of impact assessment when presenting a draft bill before Congress. Since the implementation of Presidential Instructive No. 2 there have been 8 PIAs developed as table 1 shows below.

Table 1. **Productivity impact assessments in Chile**

Ministry	Draft bill	Date
Labour	Draft bill that puts an end to the distinction between workers and employees in the administration carried out by the Institute of Occupational Safety	8 June 2017
Finance	Draft bill that regulates the protection and treatment of personal	15 March 2017
Agriculture	Draft bill that creates the National Forestry Service presented	4 April 2017
Finance	Draft bill that modernises the banking law (Basel III)	13 June 2017
Labour	Draft bill that modifies the allocation for the Social Security regarding work accidents and disease; and, creates the fund that will finance the insurance for the accompaniment of children presented	20 March 2017
Economy	Draft bill that broadens the procedure to relocate aquaculture concessions and establishes special seed collection permits	13 July 2017
Labour	Draft bill that introduces regulatory changes to the defined pension contribution scheme	14 August 2017
Labour	Draft bill that creates a new collective savings scheme, increases the pension system coverage and strengthens the “Solidarity Pillar”	14 August 2017

Regulatory reform, understood as the changes that improve the quality of the regulatory environment, provides a real opportunity to stimulate economic activity, unlock productivity and growth gains. In fact, the OECD has found that high-quality regulation at one level of government can be undermined by poor regulatory policies and practices at other levels, impacting negatively on the performance of economies and on business and citizens’ activities. (OECD, 2015)

For example, the Australian government launched an extensive regulatory reform agenda to reduce regulatory burdens and boost productivity. As part of the reform, a Spring Repeal Day was held in 2015 announcing reforms which, when implemented, would result in reduced compliance costs of \$4.5 billion for business, community organisations and individuals.<sup>2</sup>

2. [www.cuttingredtape.gov.au/2015-spring-repeal-day](http://www.cuttingredtape.gov.au/2015-spring-repeal-day) (accessed September 2017).

The government of Malaysia reports that their regulatory reform agendas on National Key Economic Areas, work was undertaken to revise 23 industries including healthcare, oil and gas, logistics, and construction with a potential compliance cost saving estimated at RM2.5b (approx. USD 590m) according to the Malaysia Productivity Corporation.<sup>3</sup>

Estimates also suggest that many EU countries could raise employment rates by up to 2% simply by aligning their regulatory frameworks with the average among OECD countries (OECD, 2015).

Stemming from the National Agenda for Productivity, Innovation and Growth,<sup>4</sup> led by MINECON, the introduction of PIA in the Chilean rule-making process aims at increasing productivity, which is identified as the key to achieving high and sustained growth, and to reach greater well-being for citizens. That is why it is important that the regulations promoted by the Government consider their potential effects on productivity by means of impact assessments. Continuing to embed regulatory impact assessments is a practice that should transcend electoral terms.

For this purpose, the government of Chile created an inter-ministerial committee that oversees and supports the implementation of the Presidential Instructive No. 2. The committee is led by the Ministry of Economy, Development and Tourism and has senior representatives from the economic area of the government that comprises ministries from Agriculture, Energy, Environment, Labour, Public Works, Mining, Transport and Finance, as well as a representative from the Ministry of the Presidency, SEGPRES.

Interviews with several stakeholders confirmed that the PIAs support greater clarity of draft bills by having a broader system-wide view beyond specific issues. Furthermore, it informs the Ministries on possible challenges they may face on the implementation side of the policy coin, based on evidence.

### ***Introducing thresholds***

The *Regulatory Policy Outlook Readers' Companion* mentions the importance of introducing thresholds and recommends countries to “start from major regulatory proposals and then lower the threshold to cover less significant regulations”.

3. Malaysia Productivity Corporation, “Annual Report on Modernisation of Regulations 2016”, [www.mpc.gov.my](http://www.mpc.gov.my) (accessed August 2017).
4. [www.agendaproductividad.cl/](http://www.agendaproductividad.cl/).

### Box 1. Threshold tests to apply RIA: Some country examples

In **Australia**, a Preliminary Assessment determines whether a proposal requires a RIA (or a RIS, regulation impact statement as they call it) for both primary and subordinate regulation (as well as quasi-regulatory proposals where there is an expectation of compliance). A Regulation Impact Statement is required for all Cabinet submissions. This includes proposals of a minor or machinery nature and proposals with no regulatory impact on business, community organisations or individuals. A RIA is also mandatory for any non-Cabinet decision made by any Australian Government entity if that decision is likely to have a measurable impact on businesses, community organisations, individuals or any combination of them.

**Belgium** applies a hybrid system. For example, of the 21 topics that are covered in the RIA, 17 consist of a quick qualitative test (positive / negative impact or no impact) based on indicators. The other 4 topics (gender, SMEs, administrative burdens, and policy coherence for development) consists of a more thorough and quantitative approach, including the nature and extent of positive and negative impacts.

**Canada** applies RIA to all subordinate regulations, but employs a Triage System to decide the extent of the analysis. The Triage System underscores the Cabinet Directive on Regulatory Management’s principle of proportionality, in order to focus the analysis where it is most needed. The development of a Triage Statement early in the development of the regulatory proposal determines whether the proposal will require a full or expedited RIA, based on costs and other factors:

- Low impact, cost less than CAD 10 million present value over a 10-year period or less than CAD 1 million annually;
- Medium impact: Costs CAD 10 million to CAD 100 million present value or CAD 1 million to CAD 10 million annually;
- High impact: Costs greater than CAD 100 million present value or greater than CAD 10 million annually.

**Mexico** operates a quantitative test to decide whether to require a RIA for draft primary and subordinate regulation. Regulators and line ministries must demonstrate zero compliance costs in order to be exempt of RIA. Otherwise, a RIA must be carried out. For ordinary RIAs comes a second test – qualitative and quantitative – what Mexico calls a “calculator for impact differentiation”, where as a result of a 10 questions checklist, the regulation can be subject to a High Impact RIA or a Moderate Impact RIA, where the latter contains less details in the analysis.

The **United States** operates a quantitative test to decide to apply RIA for subordinate regulation. Executive Order 12866 requires a full RIA for economically significant regulations. The threshold for “economically significant” regulations (which are a subset of all “significant” regulations) is set out in Section 3(f)(1) of Executive Order 12866: “Have an annual effect on the

**Box 1. Threshold tests to apply RIA: Some country examples (cont.)**

economy of USD 100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.”

In the **European Commission** a qualitative test is employed to decide whether to apply RIA for all types of regulation. Impact assessments are prepared for Commission initiatives expected to have significant economic, social or environmental impacts. The Commission Secretariat general decides whether or not this threshold is met on the basis of reasoned proposal made by the lead service. Results are published in a roadmap.

Source: 2014 Regulatory Indicators Survey results, [www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm](http://www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm).

The Chilean pilot phase considers the development of PIAs for all primary laws initiated in the Executive meaning that the scope encompasses draft bills of the economic sector with no further differentiation, or proportionality test. The latter could help establish if a draft bill should have a simplified, full-fledged or exempted PIA, depending on the issue at hand as shown in the example found in Table 2. Moreover, the system could gradually include major subordinate legislation. For instance the European Commission launched its impact assessment system in 2000 by focusing (after two years of pilot phase) in all major proposals included in its yearly work programme. Over the years, the system has been gradually extended to cover major delegated and implementing acts (subordinate legislation).

**Table 2. The regulatory impact statements (RIS) of Australia at a glance**

	<b>When is it used?</b>	<b>What must it contain?</b>
<b>LONG FORM</b>	<ul style="list-style-type: none"> <li>• The policy proposal has substantial or widespread impact on the economy.</li> <li>• The proposed changes affect a large number of businesses, community organisations or individuals.</li> <li>• The administrative and compliance costs are high or onerous.</li> <li>• There may be determined opposition among stakeholders or the public.</li> <li>• The issue is sensitive, contested and may attract media attention</li> </ul>	<ul style="list-style-type: none"> <li>• Answers to all seven RIS questions.</li> <li>• Analysis of genuine and practical policy options.</li> <li>• Analysis of the likely regulatory impact.</li> <li>• Evidence of appropriate public consultation.</li> <li>• A formal cost-benefit analysis.</li> <li>• A detailed presentation of regulatory costings and offsets.</li> </ul>



Table 2. The regulatory impact statements (RIS) of Australia at a glance (*cont.*)

	When is it used?	What must it contain?
<b>STANDARD FORM</b>	<ul style="list-style-type: none"> <li>The policy proposal has measurable but contained impact on the economy.</li> <li>The proposed changes affect a relatively small number of businesses, community organisations and individuals.</li> <li>The administrative and compliance costs are measurable but not onerous.</li> <li>There is unlikely to be vigorous opposition among stakeholders or the public.</li> <li>The issue is uncontroversial and unlikely to attract media attention.</li> </ul>	<ul style="list-style-type: none"> <li>Answers to all seven RIS questions.</li> <li>Analysis of genuine and practical policy options.</li> <li>Analysis of the likely regulatory impact.</li> <li>Evidence of appropriate public consultation.</li> <li>A detailed presentation of regulatory costings and offsets.</li> </ul>
<b>SHORT FORM</b>	<ul style="list-style-type: none"> <li>The policy issues are simple, clear cut or policy alternatives limited.</li> <li>The policy is a matter of national security, public safety, natural disaster or pressing event.</li> <li>The regulatory impact of the policy is of lower priority than some other factor.</li> <li>A RIS has recently been completed and only minor modifications have been made to the original policy options under consideration.</li> <li>The proposal is non-regulatory, minor or machinery in nature.</li> </ul> <p><i>* The Short Form option is only available for matters to be considered by Cabinet.</i></p>	<ul style="list-style-type: none"> <li>A summary of the proposed policy and any options considered.</li> <li>An overview of likely impacts.</li> <li>An outline of regulatory costs and cost offsets.</li> </ul>

*Note:* The 7 questions for the Australian RIS are: *a.* what is the problem you are trying to solve? *b.* why is government action needed? *c.* what policy options are you considering? *d.* what is the likely net benefit of each option? *e.* who will you consult about these options and how will you consult them? *f.* what is the best option from those you have considered? *g.* how will you implement and evaluate your chosen option?

*Source:* The Australian Government Guide available at [www.cuttingredtape.gov.au](http://www.cuttingredtape.gov.au) (accessed August 2017).

## Scope recommendations

- Develop* rationale and/or incentives for high level support of RIA in Chile coupled with any suitable activities for a narrative that includes the upcoming administration. In many countries there are several reasons for the introduction of RIA; nevertheless the importance of good regulatory practices to support economic growth is one of the main reasons. This task could be developed by the inter-ministerial committee led by the Ministry of Economy,

Development and Tourism. For instance, some of the most recurrent public policy motivations for the adoption of RIA (Renda, 2015) , apart from the stated economic links, are:

- *Efficiency/burden reduction*: When RIA makes use of methods such as cost-benefit analysis, its use helps the administration decide in favour of more efficient policy options, discarding less efficient alternatives. Over time, if it is correctly implemented, this should lead to greater social welfare through an increase in the net benefits of public policies.
- *Transparency*: RIA can increase the transparency of public policy decisions since it forces public administrations to motivate their actions in writing and to explain why the proposed course of action is more desirable than available alternatives, including the option of doing nothing.
- *Accountability*: The use of RIA also promotes the accountability of governments, i.e. their responsibility for the outcomes generated by policy.
- *Controlling bureaucracies*: RIA has been used as a means to provide the centre of government with a tool that enables more effective control of what agencies do through regulation, without the need for the centre of government to acquire the same level of specialised knowledge as their agents. Modern government is based on the principle of delegation and oversight, and as such implies that specialised agencies, to which important government tasks must be delegated, are overseen by the centre of government (OECD, 2012a).
- *Effectiveness and policy coherence*: This implies the use of RIA as a tool to achieve the government's long-term plans and realise the government's agenda.
- *Develop* an initial checklist on regulatory quality – self-regulating – for non-economic ministries. The checklist can follow the *1995 OECD Recommendation on Improving the Quality of Government Regulation* as an example to help broaden the scope of PIAs and introduce it gradually to non-economic areas.

### Box 2. 1995 OECD Recommendation on Improving the Quality of Government Regulation

In 1995, the OECD published the *Recommendation on Improving the Quality of Government Regulation* to improve the effectiveness and efficiency of government regulation by upgrading the legal and factual basis for regulations, clarifying options, assisting officials in reaching better decisions, establishing more orderly and predictable decision processes, identifying existing regulations that are outdated or unnecessary, and making government actions more transparent. In order to provide guidance for countries in developing and implementing better regulation, a *Reference Checklist for Regulatory Decision-making* was issued containing ten questions that can be applied at all levels of decision and reflect principles of good decision-making.

- Q1. Is the problem correctly defined?
- Q2. Is government action justified?
- Q3. Is regulation the best form of government action?
- Q4. Is there a legal basis for regulation?
- Q5. What is the appropriate level (or levels) of government for this action?
- Q6. Do the benefits of regulation justify the costs?
- Q7. Is the distribution of effects across society transparent?
- Q8. Is the regulation clear, consistent, comprehensible, and accessible to users?
- Q9. Have all interested parties had the opportunity to present their views?
- Q10. How will compliance be achieved?

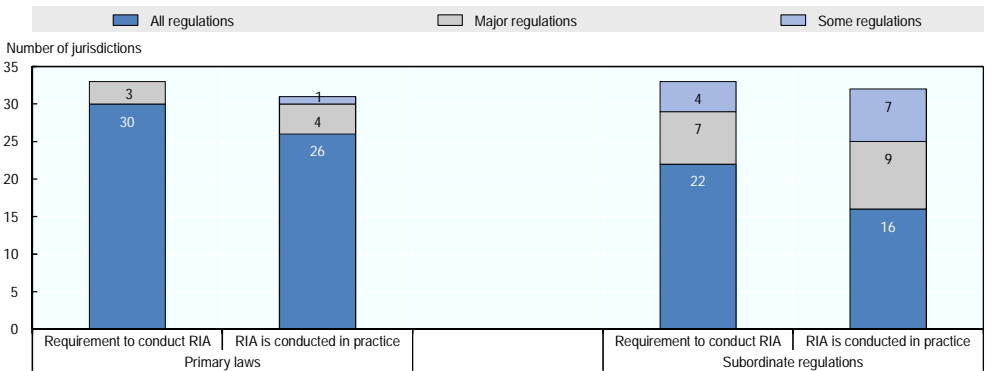
Source: OECD (1995), *Recommendation of the Council of the OECD on improving the quality of government regulation*, OECD Publishing, Paris, [www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=OCDE/GD\(95\)95](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=OCDE/GD(95)95).

- *Raise* greater and continual awareness about the benefits, and experiences of carrying out RIA in Chile. The Ministry of Economy, Development and Tourism along with the Inter-Ministerial Committee should liaise internally – central government – and externally – stakeholders like Congress, universities, think tanks, mass media – to carry out public relations activities (e.g. forums, seminars, interviews, communicational campaigns) explaining the use and importance of RIA and its direct link with economic growth. As stated in the 2015 Regulatory Policy Outlook, “countries have the opportunity to demonstrate that RIA is about ensuring that

new regulations add to the overall welfare of societies by measuring and communicating the benefits of the RIA system. Beyond identifying the net positive benefits in monetary value of new regulations, relevant performance indicators could be employed to reveal the added benefits of RIA to citizens and businesses due to reductions of administrative burdens and regulatory costs, or due to reduction of incidents on human health or the environment, for instance”.

- *Establish* the requirement to do RIA in a legal provision (e.g. on the short term it can take the shape of a Presidential Instructive, Presidential Decree or administrative order; on the long term it could be enshrined in law) that ensures the continuity of the project over different presidential terms. The requirement should include clear direction on threshold, scope, process for Ministries of the economic area on the short term and for the remaining Ministries on the long term. RIA is a management tool that aims at improving legal and economic efficiency and efficacy of regulation and therefore it is important to improve and maintain regardless of the political party in power.

Figure 1. Adoption of RIAs: Formal requirements and practice



Note: Based on data from 34 countries and the European Commission.

Source: 2014 Regulatory Indicators Survey results, [www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm](http://www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm).

- *Develop* ministry guidelines for doing RIA, including both process and standard operating procedures. Currently, the ministries mandated to perform PIAs follow the structure established in the Presidential Instructive No.2 without set standard operating procedures due to the novelty of the mechanism. Henceforth, the

ministries could collect the lessons learned to create internal guidelines on how to carry out a PIA adding to the internal processes institutional memory.

- *Explore* the possibility of changing the name from “productivity impact assessment” to “(regulatory) impact assessment” to avoid confusions and broaden the scope of RIAs to non-economic ministries.
- Long term: *Make* RIA applicable to proposals initiated by Congress for consistency in the overarching regulatory environment.

## Process

The 2015 *OECD Regulatory Policy Outlook* highlights that RIA is both an administrative and decision-making tool and a regulatory quality process that helps policy makers to design policies which are evidence based and fit-for-purpose. In a moment where trust in the institutions is an ongoing debate, the RIA process can assist by introducing levers of transparency and accountability in the regulation-making system by disclosing the design of the regulation.

In Chile, the initial decision to regulate stems mainly from the electoral and government programme of the corresponding administration but can also emanate from any unforeseen societal concern. The 2012 *OECD Recommendation of the Council on Regulatory Policy and Governance* insists on the importance that the RIA process must be integrated into the overall rule-making system and not as an add-on. These two elements should be complementary since RIAs, or PIAs in the Chilean context, can inform with empirical data the most beneficial policy option for society notwithstanding the origin of the decision to regulate.

The efforts carried out by MINECON resulted in the issuance of the Presidential Instructive No. 2 which mandates the sponsoring ministries to carry out the PIAs inside the ministry responsible for the regulation. OECD experience has supported the idea of sponsoring ministries carrying out impact assessments because it is where expertise can be found and it enables a deeper reflection of the policy problem and expected solution.

Before presenting a draft bill to Congress, SEGPRES does a technical and legal quality assessment of the draft bill and verifies that the productivity impact assessment (sponsoring ministry) and the budgetary impact assessment (DIPRES) are done. When all the documents are ready, the Executive sends the draft bill coupled with both assessments to Congress for discussion. It is only then that these three documents are made public.

### ***Benefits found in the development of PIAs***

Interviews showed that RIA allowed to include elements in the draft bills that were not thought of in the beginning, to approach the problem in a systemic manner, as opposed to a silo approach, as well as supporting and signalling the need for co-ordination. For example, it supported co-ordination between the Ministry of Finance, the Central Bank and corresponding Superintendencies to prepare the PIA for the banking law mentioned above.

The preparation of PIAs has also helped prepare a draft bill and endow with an empirical set of data, the proposals being carried forward to Congress. The PIAs have also served as building blocks for the very necessary bridge between political scientists, lawyers and economists, or in the Chilean officials' words, *bridging the worlds of word and excel*, which in turn helps present sounder bill proposals and increase efficiency.

The process assessment will highlight some issues, like forward planning agendas, and the introduction of a challenge function, which could be undertaken by the Chilean government to improve the current process. For a snapshot of the overall regulatory process see the next section *Regulatory impact assessment in Chile*.

### ***Presenting a regulatory forward planning agenda***

There is scope for standardising the practice of a regulatory forward planning agenda in Chile; it is currently not systematic due in part to the political component of the timing in which draft bills are presented in Congress. The latter can be an obstacle for planning and establishing standard operating procedures. The 2016 OECD *Regulatory Policy in Chile* already signalled the need to establish quality standards for the development of bills including forward planning agenda amongst other elements. These standards would help policy units and regulators to prepare their regulatory interventions in a more systematic way, as well as facilitating a culture that promotes regulatory quality.

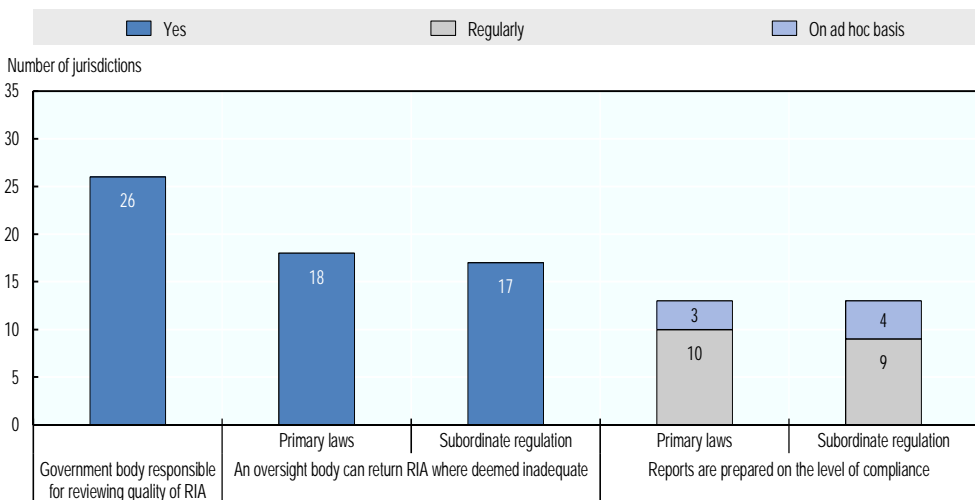
### ***Building a challenge function to ensure quality***

The 2012 *Recommendation of the Council on Regulatory Policy and Governance* states that regulatory oversight bodies should be tasked with four functions: “quality control” of regulation, playing a role in examining the potential for regulation becoming more effective, contributing to the systematic improvement of regulatory policy, and co-ordinating *ex post* evaluation for policy revision and for refinement of *ex ante* methods.

Chile could greatly benefit from having a checks and balances system for regulation, meaning having an institution in charge of ensuring the regulatory quality. Currently, the quality is being guaranteed by the ministry sponsoring the draft bill whose minister signs off the PIA with no further established requirements. The sponsoring ministry can opt for an informal request for comments from the Ministry of Economy, Development and Tourism. However, there is no systematic scrutiny or assurance of the quality of RIAs, which impedes building the necessary institutional memory for constant improvement. While this step does not necessarily make the work easier it does make it better.

According to the *Regulatory Policy Outlook*, 26 countries have a government body outside the ministry sponsoring the regulation responsible for reviewing the quality of RIA (Figure 2). However, not all of these bodies have a “challenge” function, namely the capacity to return the RIAs to line ministries and regulators when the oversight bodies deem them to be inadequate.

Figure 2. Oversight of RIA



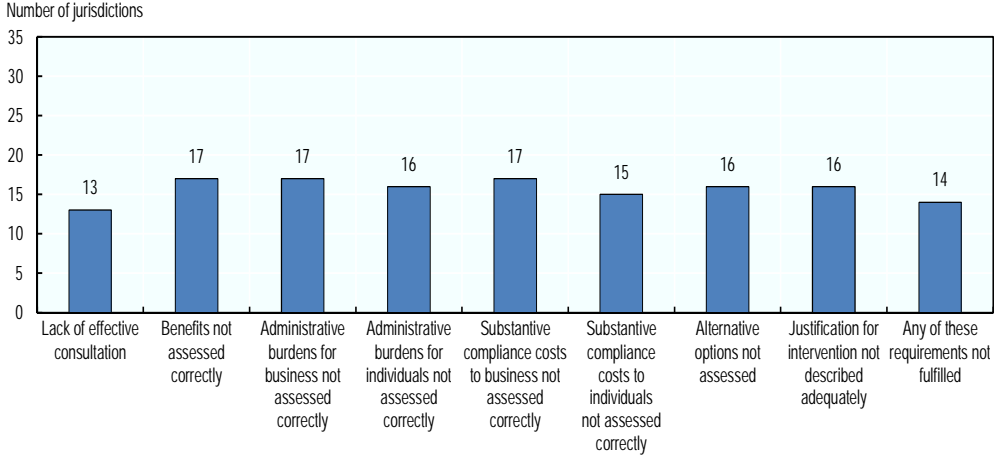
Note: Based on data from 34 countries and the European Commission.

Source: 2014 Regulatory Indicators Survey results, [www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm](http://www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm).

In the specific case of RIA, the oversight body should be charged with improving the quality of impact assessments, by providing scrutiny and challenging proposals that are, for example, not accompanied by a

satisfactory assessment or are lacking co-ordination with other ministries. Figure 3 shows different grounds for returning a RIA.

Figure 3. Grounds upon which an oversight body can return RIA for revision



Note: Based on data from 34 countries and the European Commission. The figure displays the number of countries that have reported the different grounds on which an oversight body can return RIA for revision for either primary laws or subordinate regulations.

Source: 2014 Regulatory Indicators Survey results, [www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm](http://www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm)

### Process recommendations

- *Encourage* transforming the governmental programme into a forward regulatory planning agenda, aim at having it on an annual basis. The agendas could be developed on an annual basis or in parallel with Congress terms, with the possibility of modification. See Box 3 for examples in other jurisdictions.

#### Box 3. Forward planning on regulatory measures

A number of OECD countries have established mechanisms for publishing details of the regulation they plan to prepare in the future. Forward planning has proven to be useful to improve transparency, predictability and co-ordination of regulations. It fosters the participation of interested parties as early as possible in the regulatory process and it can reduce transaction costs through giving more extended notice of forthcoming regulations. See below for some examples.



### Box 3. Forward planning on regulatory measures (cont.)

In **Ireland**, primary laws are subject to a public forward agenda. Indeed, the Office of the Chief Whip prepares the government legislative programme for primary legislation for the upcoming parliamentary session. It publishes, along with a press release, the programme on the website of the Department of Taoiseach (government department of the Head of Government) before each parliamentary session. The Government Legislation Committee (GLC), chaired by the Government Chief Whip, oversees the implementation of the programme in close co-operation with the Office of the Parliamentary Counsel to the Government (OPC). It makes recommendations to the government in relation to the level of priority that should be accorded to the drafting of each bill. The point of this procedure is to anticipate blockages that might occur in the process and recommend actions to avoid any delays in the drafting process.

In **Sweden**, work flows from the government’s political agenda, based on the coalition agreement at the start of each political term. The Prime minister’s Office submits a list of upcoming bill proposals twice a year to the parliament. The annual Budget Bill also indicates the direction of reforms. It gives significant information about priorities, including new legislation for the coming years. The government also informs the *Riksdag* annually about appointed Committees of Inquiry and their work (*kommittéberättelsen*, the Committee Report). These documents are available on the government’s website.

The **Korean** Futuristic Regulatory Map analyses and predicts the current and future trends of industrial convergence and technological development in the fields of emerging industry. Based on such analysis, the Futuristic Regulatory Map provides a forward-looking plan for regulatory reform. In specific, it provides a direction for future policy reforms, a plan for improvement of existing regulations. The Futuristic Regulatory Map is a specific project focused on one precise field; nevertheless, it illustrates a good practice of forward-planning based on the expected needs for regulatory improvement.

The **European Commission** identifies forward-planning as a priority for “Better Regulation”. Despite the complexity of predicting a regulatory agenda for a political area sensitive to 27 distinguish political wills, the European Commission aims to follow the *President Political Guidelines* and the *Agenda Planning*. These public resources are mostly determined by political projects and validation for new regulation as well as by evaluation of policies already in place, assessment of problems and alternative solutions, and active engagement with stakeholders.

*Source:* OECD (2013), *Regulatory Policy in Colombia: Going beyond Administrative Simplification*, OECD Publishing, <http://dx.doi.org/10.1787/9789264201941-en>, OECD (2017), *Regulatory Policy in Korea: Towards Better Regulation*, OECD Reviews of Regulatory Reform, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264274600-en>, OECD (2010), *Better Regulation in Europe: Ireland*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264095090-en>, OECD (2010), *Better Regulation in Europe: Sweden 2010*, OECD Publishing, Paris, [www.oecd.org/gov/regulatory-policy/45419072.pdf](http://www.oecd.org/gov/regulatory-policy/45419072.pdf); and European Commission, *Better “Regulation in the Commission, Guidelines”*, [http://ec.europa.eu/smart-regulation/guidelines/ug\\_chap1\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/ug_chap1_en.htm) (accessed August 2017).

- *Articulate* and disseminate the full PIA process flowchart including timelines, minimum standards, thresholds, stakeholder engagement. First, develop a standard two-page executive summary format for PIAs to subsequently engage in a process that includes standard operating procedures.
- *Determine* and anchor an oversight mechanism and unit during the RIA elaboration process with views to including a veto power after an adjustment period. In general there are three approaches that Chile could reflect on and follow:
  1. **Short term** - Creating partnerships between sponsoring ministries, gatekeepers and specialised units with technical expertise like the case of Mexico and the Federal Commission for Regulatory Improvement.<sup>5</sup> In the Chilean context this could translate in having the sponsoring ministries draft the PIA, MINECON would be mandated to issue an opinion on the PIA signalling strengths and challenges for the sponsoring ministry to consider and send a final version to SEGPRES.
  2. **Medium to long term** - Develop the capacities inside the government structure like the case of the United States and the Office of Information and Regulatory Affairs<sup>6</sup> in the United States. This would entail creating the capacities and skills preferably at the Centre of Government, or in the Ministry of Economy, Development and Tourism.
  3. **Medium to long term** - Having an independent body tasked with the scrutiny of the PIAs like it is done by the Regulatory Policy Committee<sup>7</sup> in the United Kingdom. This option would need to endow an independent body like the National Productivity Commission or an Advisory Council of universities, with the powers to assess PIAs.

As stated above, the first option could be an immediate next step in the gradual process of embedding RIA in Chile, leaving the second and third options for a longer term decision, if any, based on the experience and feedback of initial implementation of RIA.

5. <https://www.gob.mx/cofemer>.

6. <https://www.reginfo.gov/public/>.

7. <https://www.gov.uk/government/organisations/regulatory-policy-committee>.

Oversight bodies can help officials by supporting: i) consultation and technical assistance, ii) review of individual PIAs, and iii) stocktaking of compliance by ministries.

#### Box 4. Regulatory oversight: Australia and the United Kingdom

In the **Australian state of Victoria**, a ministerial approval requirement is directly established in primary legislation. The minister must provide, in respect of all delegated legislation, a written certificate stating that the RIA requirements of the Subordinate Legislation Act have been complied with and that, in his/her opinion, the RIA document adequately assesses the likely impact of the regulatory proposal. In this case, the importance of ministerial endorsement of the RIA document is further strengthened by the legislated requirement for review of the proposed regulation and its accompanying RIA document by a parliamentary committee, which may recommend its disallowance in cases of significant procedural defect.

In the **United Kingdom**, there have been a series of advisory bodies for regulatory reform. The current body is the Regulatory Policy Committee (RPC). It provides external, independent scrutiny of new regulation. Government institutions have to prepare an impact assessment that is scrutinised by the RPC, which provides an opinion to the Reducing Regulation Committee on the quality of analysis and evidence presented in the impact analysis. This opinion then informs the decisions of ministers as to whether they proceed or not with the proposal. The RPC consists of a mix of eight independent experts with a wide range of experience and current knowledge of business, employee and consumer issues. It is supported by a secretariat of eleven civil servants. More recently, the RPC has been asked to take on a wider role to investigate and report publicly on regulatory barriers preventing innovative businesses from growing and reaching their full potential.

*Source:* OECD (2014), *Regulatory Policy in Mexico: Towards a Whole-of-Government Perspective to Regulatory Improvement*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264203389-en>; and Parliament of Victoria, Australia (1994), Subordinate Legislation Act 1994 (No. 104/1994), [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au).

- *Integrate* the existing institutional processes into the overall PIA. For example, one possibility is to merge the budgetary impact carried out by DIPRES into the overall PIA reports as a section on enforcement and compliance costs for the public administration. This would strengthen the assessment and enable synergies between the two documents.

- *Seek* external benchmarking for the impact assessment process in two years, the National Productivity Commission could be charged with the task regardless of the oversight option selected from the examples above.
- Long term: *Explore* the role of Congress in scrutinising process and selected PIAs in, and every, 2 years. The Congressional Research Library could be an important ally in this matter.

## Methodology

A systematic and consistent methodology is imperative to attain constant regulatory quality. The methodology should be scaled up to the necessities of each country; RIA methods vary depending on each country, they include: cost-benefit, cost-effectiveness or cost-output analysis, fiscal or budget analysis, socio-economic impact analysis, risk analysis, compliance cost analysis and business impact tests.

The issues to be included in the assessment of every PIA are included in Presidential Instructive No. 2 which contains 5 outstanding sections: i) definition of the problem, ii) objective of the regulation, iii) alternatives to the regulation, iv) potential benefits, and v) potential costs. See Box 5 for a detailed structure. The creation of manuals or step-by-step guidelines could be a valuable support for the development of the impact assessments even when the presidential instructive sets the baseline for the topics the PIAs should address.

### Box 5. Requirements for impact assessments in Chile

1. What is the problem in need of solution?
  - a. Identify clearly what problem does the draft bill resolves.
  - b. Make an estimation of the magnitude of the problem, identifying potential affected parties.
  - c. Analyse possible implications derived from not carrying out the actions contained in the draft bill coupled with evidence, if possible.
2. What are the objectives to be reached?
  - a. Identify what is (are) the objective(s) of the draft bill that will allow resolving the stated problem.
  - b. Indicate how the draft bill will achieve the objective(s)
  - c. Indicate in which variables will the achievement of the objective(s) will reflect
  - d. Specify in which manner the achievement of the objectives will be measured
  - e. Identify obstacles or limitations to reach the expected objectives under the current regulatory framework

**Box 5. Requirements for impact assessments in Chile (cont.)**

- f. Add a good practices benchmark stemming from other sectors or other countries in the same sector, that will help achieve the expected objective(s).
3. What options or alternatives have been considered?
    - a. Indicate if there are any similar public policies in terms of expected objectives currently in force and if potential duplicities are foreseen
    - b. Identify policy alternatives with which that same problem could be addressed and its feasibility
    - c. If practical, describe politics or actions that have been implemented previously with the same objective and flag their shortcomings
    - d. Explain why, and under which criteria is the proposal presented better than the other options
    - e. Identify other public policies with which the proposal presented would need to co-ordinate for a better efficiency in achieving the expected objectives.
  4. What are the potential benefits of the draft bill?
    - a. Identify and characterise potential beneficiaries of the draft bill. If possible, include an estimate of the quantity of persons, business or organisations will it potentially benefit
    - b. Identify and, if possible, quantify the benefits of the project, direct and indirect. Specially, quantify the following:
      - i) Incentives to innovation and entrepreneurship
      - ii) Incentives to investment
      - iii) Incentives to the efficient use of resources
      - iv) Incentives to labour participation
      - v) Reduction of the time costs for the agents involved
      - vi) Reduction of the financial costs for the agents involved
      - vii) Other relevant elements for the analysis.

Establish how the benefits stated above are distributed among potentially affected stakeholders. The quantification of the potential benefits should be valued in a common metric, for example, in monetary terms. If it is not possible, some kind of quantity or value indicators should be used. In each case, the assumptions used should be explained.
  5. What are the potential costs of the draft bill?
    - a. Identify and characterise potentially affected stakeholders and, if possible, include an estimate of the number of the potentially affected persons, firms or organisations
    - b. Identify and, if possible, quantify the draft bill costs, both direct and indirect. In particular and, if possible, focus on the following elements:
      - i) Disincentives to innovation and entrepreneurship
      - ii) Disincentives to investment
      - iii) Disincentives to the efficient use of resources
      - iv) Disincentives to labour participation

**Box 5. Requirements for impact assessments in Chile (cont.)**

- v) Increase of the time costs for the agents involved
- vi) Increase of the financial costs for the agents involved
- vii) Other relevant elements for the analysis.

Establish how the costs stated above are distributed among potentially affected stakeholders. The quantification of the potential costs should be valued in a common metric, for example, in monetary terms. If it is not possible, some kind of quantity or value indicators should be used. In each case, the assumptions used should be explained.

Embedding impact assessments is not a sprint but a careful and thorough race that needs to sink into the culture of the public administration. However, lessons can be learnt to accelerate the process to embed RIA. Following OECD recommendations, notably the introduction of PIAs, Chile has set the building blocks for an evidence-based regulatory system. The current methodology requirements contain some highlights like the use of academic literature and comparative examples, the requirement to describe the problem, and the requirement to quantify objectives and reflect on different possible solutions based on empirical data.

As any other RIA system in OECD countries, there are some areas of opportunity to be addressed after the initial 6-month implementation phase; these methodological issues are described below. In order to do the assessment, a sample of three PIAs was scrutinised to recommend possible ways forward, note that the totality of 8 PIAs can be found in: [www.economia.gob.cl/informes-de-productividad/informes](http://www.economia.gob.cl/informes-de-productividad/informes).

The three PIAs observed were:

- Ministry of Economy: Draft bill that broadens the procedure to relocate aquaculture concessions and establishes special seed collection permits.
- Ministry of Labour: Draft bill that puts an end to the distinction between workers and employees in the administration carried out by the Institute of Occupational Safety.
- Ministry of Finance: Draft bill that modernises the banking law (Basel III).

The effort done by MINECON to embed RIA in the rule-making process, as well as economic ministries complying with the Presidential Instructive, entails some methodological progress that can be seen as a good practice; including drafting and publishing the comprehensive PIAs on the

pension's reform which have served as empirical support for the policy discussion in Chile.

The assessment below presents some areas where the administration could find improvements for the quality of the impact assessments. Overall, the future PIAs could benefit from having a template that could enable the ministries fill out the required information framed by a dedicated manual.

### ***Problem definition***

The definition of the problem could be linked to the overall government goal – productivity, economic growth, inclusion, reducing compliance costs, eliminating administrative burden, etc. – to allow for the rationale to be straightforward for the unaccustomed reader.

While the problem definition sections contain a description of the problem, it could make more explicit the magnitude or scale of said problem. The latter would allow having an overall perspective of the degree of the policy problem at hand. For example, how many workers are under a certain status in the PIA drafted by the Ministry of Labour, or including a scale of the problem in the first section in the PIA drafted by MINECON.

### ***Setting objectives and evaluation targets***

Generally a regulatory intervention carries out several objectives. Identifying and listing general objectives and specific objectives and its further alignment with government priorities, in other words the underlying purpose of the PIAs, can aid in following a smooth sequence of what the regulation aims to achieve.

Moreover, the PIA should be part of the bigger evaluation strategy and not a scattered policy tool. In other words, quantitative and qualitative objects set as indicators can help carry out subsequent *ex post* assessments. The Evaluation Unit in DIPRES could serve as an important ally in this topic, both in helping establish indicators and in performing assessments.

### ***Cost and benefit measurement***

The PIAs could consider more carefully the compliance costs that impact the private sector, i.e. what will be the administrative costs of firms for complying with the new regulation, if any. Furthermore, there should be a separation/classification of the group, or stakeholder that will benefit, or bear the cost of a given regulation. The PIAs should avoid addressing the budgetary administrative costs which are already assessed by DIPRES.

The budgetary impact assessment carried out by DIPRES looks at the enforcement costs of the public sector and therefore should be integrated in the RIA for the purpose of having a sounder policy tool for empirical decision-making. Avoid duplication of tasks and profit from the expertise embedded in DIPRES for the budgetary assessments.

The alignment with other sectoral regulation (i.e. regulation coherence) is of utmost importance because it can carry costs for both the public and the private sector; this is currently not established in the PIAs as thoroughly as possible.

### ***Finding non-regulatory alternatives***

The PIAs analysed differ amongst them regarding the presentation of alternatives to regulation. On two out of the three PIAs the possibility of non-regulatory alternatives should be addressed including the cost of maintaining the status quo.

The identification of the policy problem and the consideration of meaningful alternative solutions should be performed as early as possible in the process. Impact assessments should include a justification that the chosen regulatory solution is the most suitable option and that the problem cannot be addressed through a non-legislative intervention like self-regulation, voluntary compliance, setting economic incentives; or, through other regulatory interventions like not regulating at all, introducing behavioural insights informed regulation, or creating a new regulation in the case of modifications of existing laws.

### ***Consulting with the public: Stakeholder engagement***

Chile could improve practices that ensure that the public can systematically participate in the rule-making process. Even though a recent law (Law No. 20.500) made public participation standard practice, and established permanent bodies within the administration to ensure compliance, there is still no standardised practice on how to conduct regulatory consultation, including its length, scope, timing, and underlying procedures (Querbach and Arndt, 2017). Moreover, the PIAs carried out so far do not undergo public consultation, thus, they are not subject to any public scrutiny, possible feedback, or data collection stemming from potential affected parties. The latter also forces that the policy debates take place in Congress and might risk being politicised.

Nonetheless, interviews showed that the government is able to reach out for research and expert assistance whenever they decide to regulate. This can come in the form of external consultants, expert commissions on



specific issues, or private sector committees. However, as stated above, this is not a standardised or systematic practice. For example, a group of experts was sought for the banking law draft bill that served as an Advisory Group and drafted a report in an early stage. It is fairly common for major regulations, i.e. pensions law, transparency law, draft constitution, anti-trust bill, banking law. However, as stated above, it is important to make the distinction between consulting on the proposal of the content and consulting on the PIA itself, the latter still has ample margin for improvement.

The draft OECD *Best Principles on Stakeholder Engagement in Regulatory Policy* recommends a close co-operation with stakeholders when defining the problem to be solved by a new regulation, setting its objectives, identifying various alternative solutions (including non-regulatory ones) and assessing potential impacts of these alternatives as well as when designing potential implementation mechanisms.

### ***Data collection***

According to Renda (2005), implementing data collection strategies is one of the main challenges of member countries. Data quality, an essential element of proper analysis, has been recognised as one of the most difficult parts of RIA because it can be time and resource consuming and requires a systematic and functional approach. The usefulness of RIA depends on the quality of the data used. This implies, as well, that policy makers need to gain skills, think in quantitative terms and get acquainted with data collection. In particular, RIA requires that data collection be tailored to the issues related to the specific regulation intended for review due to its contextual characteristics.

Interviews showed that in Chile, as is the case in many other OECD countries, there can be difficulty in obtaining and sharing data which could compromise the quality of the PIAs. Furthermore, legal provisions impede sharing information with the Tax Administration Office or the Ministry of Social Development. The latter makes the more important to engage with stakeholders for the purpose of data sharing and contrasting the PIAs.

This, however, does not mean that PIA efforts are futile in circumstances where resources are scarce, rather the contrary, since carrying out impact assessments is more about the process of asking the right questions to the right people (and thus creating a framework for regulatory policy making) than a process of preparing technically precise impacts statements (Renda, 2015).

## *Summarising the decision*

The PIAs assessed could benefit from a simple brief conclusion section. As it may seem obvious for the sponsoring ministry that the objectives outweigh the costs, public officials, stakeholders, congressmen as well as the general public could benefit from having a simple summarised conclusion of the analysis. The PIAs from the Ministry of Labour and the Ministry of Economy have a good start on this in the *costs sections* but this needs to be developed into its own section, an example for further development can stem from the PIA done by the Ministry of Finance for the banking law where the ministry explains the rationale for choosing the preferred regulatory option.

## Methodology recommendations

- *Establish* and promote a standardised format for all PIAs including a two-page executive summary that is fit-for-purpose and in simple plain language.
- *Develop* a PIA manual, or guidance, with initial standard operating procedures that follow a problem-output-outcome-indicator sequence to help improve the current subsections contained in Presidential Instructive No. 2. If practical, take advantage of existing expertise in the Superintendency of Values and Insurances or in the Ministry of Environment which have manuals for cost-benefit analysis. The manual, or guidance, should include:
  - The section on **problem** definition should evidence the scale or magnitude of the given problem. If possible, take a step back and link it to overall government priorities.
  - Follow the storyline to present **objectives** stemming from the problem definition. Include what outcomes to expect and which indicators or data is going to be necessary to assess *ex post*. Include if it affects any legislation currently in force.
  - Provide a broader set of non-regulatory **alternatives** like self-regulation, voluntary compliance, setting economic incentives, not regulating, introducing behavioural insights informed regulation, or creating a new regulation in the case of modifications of existing laws.
  - The impact **assessment**, or cost-benefit analysis could benefit from having a simplified version stating “winners” and “losers” to know which groups are going to feel the impact of the

regulation, linked to the distribution of compliance costs. Integrate the budgetary impact assessments done by DIPRES, avoid repeating the same information for costs regarding financial or budgetary impacts but rather focus on compliance costs for firms and stakeholders.

- Include a ‘**conclusions**’ section where the regulator/sponsoring ministry explains how they arrived to the preferred option of the policy alternatives described. It should be linked to the problem and objectives thought of at the beginning of the design phase. As stated in the assessment, the PIA for the banking law already tries to solve this issue by inserting a conclusions section. Aim at drafting it in simple plain language to allow for a wider audience of interested parties to understand the logic behind the regulation.
- Start engaging with **stakeholders** in controlled consultations (e.g. influx one-way manner or pre-consultation model) that derives in identifying: alternatives to legislation or non-regulatory alternatives, costs for implementation and enforcement, and data collection for cost and benefit measurements for the purpose of improving both PIAs and draft legislation.
- Introduce a significance **threshold** for the obligation to carry out a differentiated PIA. Economic Ministries can carry performing CBA and non-economic Ministries a regulatory quality checklist. See Box 1 for examples from other jurisdictions.
- Regarding data accessibility, establish a mechanism like the *business cost calculator* of Australia for the initial stage with a view to improve data availability in the long term.

#### **Box 6. Using the Business Cost Calculator to estimate changes in compliance costs: An example**

An Australian consultancy, the Allen Consulting Group, used the Office of Best Practice Regulation’s Business Cost Calculator to estimate the effects on industry compliance costs of a proposal to develop a National Construction Code (NCC). The NCC would consolidate existing building and plumbing standards into one code.

The first step in the Business Cost Calculator process was to identify the compliance costs that could arise from introducing a NCC. The costs that were identified were:

**Box 6. Using the Business Cost Calculator to estimate changes in compliance costs: An example (cont.)**

- transition costs for practitioners;
- costs of technical change, where the NCC would set a different technical standard to existing standards; and
- costs of purchasing the NCC.

The Allen Consulting Group used ABS data to identify the number of practitioners (builders, plumbers, building surveyors and architects) that would incur the costs in each state and territory. The breakdown by state and territory was necessary because the transition costs were expected to differ by jurisdiction. Specifically, some jurisdictions already had performance-based plumbing codes, and plumbers in these jurisdictions would require less time to adjust to the (performance-based) NCC than plumbers in other jurisdictions (two hours compared to five).

The Allen Consulting Group assumed that not all professionals and trades people would incur the costs (60% of builders and 80% of architects and building surveyors). This assumption was based on responses to a survey about the proportion of professionals and trades people that used the existing building code.

To estimate the total transitional costs, the Allen Consulting group multiplied together the:

- number of professionals and trades people in each jurisdiction;
- proportion that would need to become familiar with the NCC; and
- estimated average number of hours required to become familiar with the NCC in each jurisdiction.

Based on this, the Allen Consulting Group estimated that moving to the NCC would cost around AUD 13 million in additional compliance costs.

*Source:* Australian Productivity Commission (PC) (2011), “Identifying and Evaluating Regulation Reform”, Research Report, Canberra, p. 118.

- *Define* a specific budget for external data collection available to the sponsoring ministries and given upon request to the inter-ministerial committee. The information should be available for all ministries in a common platform regardless of the ministry that hosts such data packages.
- Long term: *Have* consultation councils after the draft bill is presented in Congress; or, establish a mandatory consultation process after the law is sent to Congress.

## Institutional arrangement

The regulation agenda is decided by the President with the support of the political committee which comprises the Ministry of Finance, the Ministry of Interior, SEGPRES and SEGEOB. Moreover, the implementation of the presidential instructive that introduces PIA is being led by an inter-ministerial committee composed of all the ministries in the economic area with MINECON serving as an executive Secretariat.

The PIA inter-ministerial committee has met once with the objective of supporting participating ministries with guidance and clarifications regarding compliance with the presidential instructive that mandates the development of PIAs. Interviews showed that the inter-ministerial committee was helpful in terms of clarification but it could serve more as a constant knowledge-sharing and capacity-building platform.

The units inside the Ministries responsible for developing the regulatory impact assessments vary from Ministry to Ministry. For example, in the Ministry of Labour it is the office of the Minister and in the Ministry of Agriculture it is the Studies Unit the one responsible.

Interviews showed that whenever there is a draft bill that includes several ministries there is always one that spearheads the project and in case of lack of co-ordination SEGPRES supports and enables communication.

## Institutional arrangements recommendations

- *Allocate* more financial and human resources that allow for the establishment of a dedicated RIA unit in the Ministry of Economy, Development and Tourism for the following actions:

Follow steps of due process and compliance with requirements for quality control;

Co-ordinate and support implementation in other Ministries;

Develop and carry out capacity-building in other ministries of the economic area.

- *Have* SEGPRES ensure that PIAs are up to standard depending on the opinion of the Ministry of Economy, Development and Tourism and DIPRES, before it can be presented to Congress. If it is not the case, do not allow draft bills to be sent to Congress.

The purpose of the cost-benefit analysis is to make the information transparent in order to enrich the discussion, exposing all the costs and benefits associated with a bill for all the potential affected entities. However, the final decision whether or not to implement a

regulation is outside the scope of the PIA, which remains only an input to make an informed decision.

- *Plan* a series of capacity-building sessions for units involved in the rule-making process – fix a central resource at the Ministry of Economy, Development and Tourism to carry out training, seek advice, organise seminars, and establish co-operation agreements with other OECD countries for knowledge sharing.
- *Promote* an annual inter-ministerial committee meeting with high level-officials (e.g. ministers), including the political committee to report on RIA performance. Express the importance to the political committee that bad quality RIAs should not be allowed in Congress.

Promote quarterly co-ordination and knowledge sharing meetings at a technical and working level in the framework of the inter-ministerial committee. The periodical meetings can also serve for constant support, as well as designing and drafting a PIA guidance or manual. Moreover, a series of international public RIA websites/sources<sup>8</sup> from other OECD countries could be made available for benchmarking purposes, as well as resolving methodological issues such as data collection or cost measurement based on collective knowledge.

- *Create* expertise inside the economic ministries with a view to improve PIAs over time. Establish a dedicated unit with existing capacities, e.g. Studies Unit coupled with a high-level senior official. Other ways forward could include training a limited number of employees in a central oversight body, and have them moved towards the appointment of contact persons, or appointing reference units for RIA in each of the departments with regulatory power.
  - *Prompt* congressmen and think tanks to be aware/make use/respond to RIA when advising ministers and speaking to media.
  - Long term: *Make* control/scrutiny of PIAs in Congress specifically by the Congressional Research Library.
8. Several countries have their RIAs made public and available, the latter could serve as a parting point for Chile’s PIAs,  
 European Commission:  
<http://ec.europa.eu/transparency/regdoc/?fuseaction=ia>,  
 Mexico: [www.cofemersimir.gob.mx/](http://www.cofemersimir.gob.mx/)  
 United Kingdom:  
[https://www.gov.uk/government/publications?departments%5B%5D=department-for-business-innovation-skills&publication\\_type=impact-assessments](https://www.gov.uk/government/publications?departments%5B%5D=department-for-business-innovation-skills&publication_type=impact-assessments).

## Regulatory impact assessment in Chile

### Introducing impact assessments in Chile

Following the 2016 *OECD Regulatory Policy in Chile* review, the government of Chile issued Presidential Instructive No. 2 introducing the obligation to carry out regulatory impact assessments as part of the rule-making process. The introduction of the regulatory management tool is framed by the government’s strategy to improve productivity led by the Ministry of Economy, Development and Tourism (MINECON) and enshrined in the National Agenda for Productivity, Innovation and Growth.<sup>9</sup>

The instructive, presented in March 2017, mandates ministries of the economic area to present a “productivity impact assessment”. The productivity impact assessment (PIA) of the bill must be attached to the draft bill sent to the Ministry General Secretariat of the Presidency (SEGPRES) in order for it to be submitted to Congress; the PIA needs to be coherent with the corresponding financial impact assessment done by the Budget Office (DIPRES).

According to Instructive No. 2, the obligation to do RIA relate to all draft bills initiated by the Executive that generate regulatory impacts. Projects that cause regulatory impacts are understood as those that include diverse types of rules that modify the incentives or behaviour in the economic sector. It is currently compulsory only for the ministries of the economic area with two exceptions: the public sector remuneration readjustment bill and the budget bill. Instructive No. 2 states that SEGPRES in collaboration with the Ministries of Finance and Economy can determine further exceptions.

Embedding *ex ante* control mechanisms for the issuance of regulation is not an easy task for any country and there are multiple paths to follow. Renda (2015) presents seven different paths that do not exclude each other for this purpose (see Box 7).

9. [www.agendaproductividad.cl/](http://www.agendaproductividad.cl/).

### Box 7. Paths to introduce RIA

- **Path 1. A pilot phase, then the institutionalisation of RIA for all regulations.** This has been a largely recurrent way of seeking the introduction of RIA. However, many countries have struggled to capitalise on the pilot phase towards a more general application of RIA as a mandatory administrative requirement.
- **Path 2. Start with the least intrusive methodology, and then expand.** For example, the measurement of administrative burdens through the Standard Cost Model is widely seen as a less intrusive method to assess a specific set of impacts of legislation, since the measurement phase is mostly left to external consultants, and no major revolutions in the administrative culture of civil servants are needed in order to bring clear results. That said, the move from the SCM towards a more complete RIA system might take years and a careful management of expectations inside and outside of the administration.
- **Path 3. Start from some institutions, and then expand RIA to others.** Government might decide to introduce RIA – whether complete or limited to specific tests e.g. administrative burdens – by looking at the administrations in which the most advanced skills and the most concentrated external stakeholders are located. This would typically be a department or minister in charge of business regulation, of retail trade.
- **Path 4. Start from major regulatory proposals and then lower the threshold to cover less significant regulations.** The European Commission launched its IA system in 2000 by focusing (after two years of pilot phase) at all major proposals included in its yearly work programme. The requirement to carry out an impact assessment relies on whether initiatives are envisaged to have significant economic, social or environmental impacts. Over the years, the system has been gradually extended to cover major delegated and implementing acts (subordinate legislation). On average, around 100 impact assessments have been produced yearly over the past years.
- **Path 5. Start with binding regulation and move to soft-law.** Some countries have realised after years of implementation of the RIA system that soft law, private standards, self- and co-regulation are sometimes more important than traditional, command and control legislation in terms of impacts on the economy and on the incentives of economic agents.



**Box 7. Paths to introduce RIA (cont.)**

- **Path 6. Start with single- or multi-criteria qualitative analysis, and then gradually move to quantitative analysis (for instance Cost Benefit Analysis or other).** When a country lacks specific quantitative skills that would enable cost-benefit analysis or similar, this does not mean that no RIA can be introduced, or that RIA will ultimately lose its “scientific” appeal. Adopting a general procedure based on qualitative analysis and requiring administrations to motivate the adoption of a specific course of action as opposed to available alternatives in words or through qualitative-quantitative analysis (e.g. scorecards) is a very valuable step in the introduction of RIA. With the right governance and institutional settings, the move towards more evidence-based, quantitative analysis (if needed) will be dictated, over time, by the need to make the case for regulation against counter-analyses provided by stakeholders, experts or other institutions.
- **Path 7. From concentrated RIA expertise to more distributed responsibilities.** An administration might well lack RIA skills, and the gap might be difficult to fill in the short term. That said, many governments can rely on public or private institutions that can assist in the performance of specific calculations, thus supporting regulatory proposals with evidence. Likewise, some countries have started piloting RIA by training a limited number of employees in the central oversight body, and have then moved towards the appointment of contact persons or reference units for RIA in each of the departments with regulatory power.

*Source:* Renda, A. (2015), “Regulatory Impact Assessment and Regulatory Policy”, in *Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264241800-en>.

The co-legislative process in Chile allows participation from both the Executive and the Legislative powers. Both branches of government can introduce draft bills and can intervene in their discussion. The President has the power to enact laws once the discussion has concluded and subsequently order the publication of such laws.

The President can exert the *Potestad Reglamentaria*, which is the power to enact subordinate regulation in the form of decrees, rulings and instructives. Subordinate regulation is subject to less strict rules than primary laws. There is currently no oversight entity that verifies the quality of primary laws or subordinate regulation.

### Box 8. Prior efforts of *ex ante* regulatory quality control in Chile

Efforts have been made to introduce *ex ante* impact assessments like the SME Statute, with limited success; and the environmental General Analysis of Economic and Social Impacts, AGIES.

The **SME Statute** was introduced by Law No. 20.416 in 2010 and revolves around defining a differentiated regulatory framework for small and medium-sized enterprises (SMEs). Recognising the particular sensitivity of SMEs to regulatory changes, it introduces the notion of cost-effectiveness of regulations for SMEs. Moreover, Article 5 of Law No. 20.416, as well as Supreme Decree No. 80, obliges institutions issuing regulation that potentially affects SMEs, to conduct an *ex ante* analysis.

The main feature resided in the recognition of the special needs and characteristics of SMEs; however, interviews showed that the SME statute did not produce the expected effect due to low compliance showing the importance of an oversight body to revise and enforce quality control mechanisms.

The Ministry of Environment carries out the General Analysis of Economic and Social Impacts (*Análisis General de Impacto Económico y Social*, **AGIES**) which is an *ex ante* assessment for plans, regulations and rules that might affect third parties and the environment enshrined in Law No. 19.300, and Law No. 20417.

The same department also published methodological guidelines for the implementation of the AGIES on different thematic like the management instruments for the quality of air. The methodology is based on cost-benefit analysis including the analysis of criteria such as health issues, gender perspective, equity, impact on indigenous communities, etc.

It also includes stakeholder engagement and facilitates it via an e-platform (<http://epac.mma.gob.cl>) with compulsory 60-day consultations for subordinate regulation. Some of these features could be useful for the economic PIAs.

*Source:* OECD (2016), Regulatory Policy in Chile, Government Capacity to Ensure High-Quality Regulation, OECD Publishing, Paris, [www.oecd.org/chile/regulatory-policy-in-chile-9789264254596-en.htm](http://www.oecd.org/chile/regulatory-policy-in-chile-9789264254596-en.htm), adapted from Carolina León S. (2015), *Estatuto Pyme: ¿qué es y cómo funciona la ley que ilusionó a los pequeños empresarios?*, La Tercera, Santiago. <http://diario.latercera.com/edicionimpresa/estatuto-pyme-que-es-y-como-funciona-la-ley-que-ilusiono-a-los-pequenos-empresarios/> (accessed July 2017), and the National Congress Library of Chile, Legal Guideline for the SME Statute (*Guía legal sobre Estatuto Pymes*) [www.bcn.cl/leyfacil/recurso/estatuto-de-las-pymes](http://www.bcn.cl/leyfacil/recurso/estatuto-de-las-pymes) (accessed July 2017).

## Institutional arrangement for the rule-making process

Presidential Instructive No. 1 issued 14 March 2016 which serves as guideline for the rule-making process, states that it is the Ministry General Secretariat of the Presidency (SEGPRES), with the support of the Ministry

of Finance, who will be responsible of establishing the prioritisation of the draft bills initiated by the executive. That will comprise the coherence and legal quality as well as co-ordinating inter-ministerial work. However, the government of Chile does not make public a forward planning agenda.

The President can also propose the “degree of urgency” of draft law proposals in the legislative agenda; and SEGPRES does the follow up of draft law proposals in congress, informing ministries about possible amendments and their implementation; prepare weekly reports on the status of the processing of draft bills; link to the Constitutional Court concerning draft bills, and to draft executive decrees for laws.

Law proposals that are initiated by the Executive need to be sponsored by, and are the responsibility of a given ministry or a group of ministries led by SEGPRES if it is a multi-sectoral draft bill. The latter has an obligation to inform the Ministry of Finance so that together, they can evaluate the draft bill and prioritise their introduction to Congress. The Ministry responsible of drafting a bill is also defined by SEGPRES.

The sponsoring ministry sends the draft bill to SEGPRES describing the legal basis, objectives and content of the proposed law and a financial impact assessment containing the expenses needed for the implementation of the initiative, in other words compliance costs for the administration. SEGPRES reviews the technical and legal coherence and determines if it is necessary that the initiative is revised or backed up by other ministries. Whenever the draft bill incurs in financial expenditure it needs to be approved by the Directorate of Budget of the Ministry of Finance, DIPRES.

DIPRES is the unit in charge of determining the budgetary impact of the draft bill. In order for DIPRES to determine the budgetary impact it can demand all relative information from the sponsoring ministry, or ministries. By law, all draft bills initiated by the Executive have to include the final financial impact assessment under the purview of DIPRES in order to enter Congress and start their due process.

Additionally, since March 2017 and by Presidential Instructive No. 2, the ministries of the economic area are obliged to present a ‘productivity impact assessment’ which is the name given to Chile’s regulatory impact assessments. The PIA has to be coherent with the corresponding financial impact assessment. The productivity impact assessment of the bill must be included on the draft sent to SEGPRES in order for the draft bill to be presented at Congress.

Moreover, the government of Chile created an inter-ministerial committee that oversees and supports the implementation of the Presidential Instructive No. 2 for the PIA process. The committee is led by the Ministry

of Economy, Development and Tourism and has senior representatives from the economic ministries; notably ministries of Agriculture, Energy, Environment, Labour, Public Works, Mining, Transport and Finance, as well as a representative from SEGPRES.

Table 3. **Institutions in the Executive power involved in the rule-making process**

Institution	Role in the rule-making process initiated by the executive power
SEGPRES	Serves as a technical and legal adviser to the President including a function of gatekeeping and follow up of the legislative agenda.
DIPRES	Unit responsible for financial impact assessments of primary laws.
Ministry of Economy	Executive Secretariat for the Inter-Ministerial Committee that oversees the implementation of RIA. Supports other ministries informally on the development of PIAs.
Inter-ministerial committee	Committee created by an Ordinary Official Letter and stemming from the Presidential Instructive No. 2. The committee supports the economic area of the government in the implementation of the productivity impact assessment.
Ministries from the economic area	Co-ordinate financial impact assessments with DIPRES and carry out productivity impact assessments for primary laws, before presenting their draft bills to SEGPRES.

*Source:* Information provided by the Ministry of Economy, Development and Tourism, June 2017.

The message introducing the draft bill, the financial impact assessment and, in some cases, the productivity impact assessments are requirements for draft bills to be submitted to Congress.

### ***The rule-making process***

Presidential Instructive No. 1 dating from 1994 and modified in March 2016, serves as a guideline for the regulatory process. The latter explicitly prohibits ministries to disseminate publicly the content of the draft bills making it difficult for engaging with stakeholders. Figure 4 presents a flowchart of the regulatory process in Chile.

Figure 4. Flowchart for primary laws



Source: Information provided by the Ministry of Economy, Development and Tourism, June 2017.

### Stock of primary laws

During 2015 and 2016, 224 primary laws were published in Chile out of which 39% were initiated by the Congress, as *motions*, without intervention from the Executive. The remaining 61% were initiated by the Executive as *messages*. According to the statistics bulletin of the Chamber of Deputies, a bill in congress takes, on average, 627 days to be enacted.<sup>10</sup> Table 4 shows the disaggregated number for each year.

Table 4. Laws, treaties and international agreements enacted and published

Initiative	2015	2016	Total	Percentage
Motion	42	46	88	39 %
Message	67	69	136	61 %
National Congress	109	115	224	100 %

Source: Information provided by the Ministry of Economy, Development and Tourism, June 2017.

These laws can be classified thematically, according to the committee assigned for discussion, as shown in Table 5:

10. [https://www.camara.cl/camara/media/docs/estadisticas/resumen\\_16.pdf](https://www.camara.cl/camara/media/docs/estadisticas/resumen_16.pdf).

Table 5. Total laws by congressional commission

Commission	2015	2016	Total	Percentage
Foreign affairs	19	17	36	16%
Internal government	13	17	30	13%
Constitution	14	10	24	11%
Education	11	13	24	11%
Treasury	11	11	22	10%
Health	7	7	14	6%
Labour	5	7	12	5%
Culture and arts	5	6	11	5%
Housing	5	4	9	4%
Mining and energy	2	5	7	3%
Public works, transport and telecommunications	6	1	7	3%
Human rights	1	3	4	2%
Economics	1	4	5	2%
Fisheries and aquaculture	4	1	5	2%
Defence	1	2	3	1%
Sports	1	1	2	1%
Agriculture	2	1	3	1%
Environment	0	1	1	0%
Internal Rulings	1	0	1	0%
Sciences and technology	0	1	1	0%
National assets	0	1	1	0%
Fire department	0	1	1	0%
Public safety	0	1	1	0%
<b>Total</b>	<b>109</b>	<b>115</b>	<b>224</b>	<b>100%</b>

Source: Information provided by the Ministry of Economy, Development and Tourism, June 2017.

### *Identification of a public policy problem; the need for regulation*

The need for regulation stems mainly from the necessity to implement the government's electoral and public policy programme. Nonetheless, the need for regulation also responds to particular contingencies such as catastrophes or the necessity to regulate new services. For example; the recent fires in the central-south region, on which the government needed to empower the National Forestry Agency; or, an intervention as a response to the appearance of an unregulated type of transport service like Uber.

## Regulation assessment in Chile

The obligation to do a PIA is for all the draft bills of the Executive that stem from the economic sector and generate a regulatory impact. Projects that cause a regulatory impact are understood as those that include diverse types of rules that modify the incentives or behaviour in the economic sector. As stated before, it is currently compulsory only for the ministers of the economic area with two exceptions: the public sector remuneration readjustment bill and the budget bill.

Since the introduction of Presidential Instructive No. 2, eight reports have been sent to Congress:

- **Ministry of Labour:** Draft bill that puts an end to the distinction between workers and employees in the administration carried out by the Institute of Occupational Safety.
- **Ministry of Finance:** Draft bill that regulates the protection and treatment of personal data presented 15 March 2017.
- **Ministry of Agriculture:** Draft bill that creates the National Forestry Service presented 4 April 2017.
- **Ministry of Finance:** Draft bill that modernises the banking law presented 13 June 2017.
- **Ministry of Labour:** Draft bill that modifies the allocation for the Social Security regarding work accidents and disease; and, creates the fund that will finance the insurance for the accompaniment of children presented 20 March 2017.
- **Ministry of Economy:** Draft bill that broadens the procedure to relocate aquaculture concessions and establishes special seed collection permits presented 13 July 2017.
- **Ministry of Labour:** Draft bill that introduces regulatory changes to the defined pension contribution scheme presented 14 August 2017.
- **Ministry of Labour:** Draft bill creates a new collective savings scheme, increases the pension system coverage and strengthens the “Solidarity Pillar” presented 14 August 2017.

For the year 2017, the Government of Chile foresees an elaboration of eight to ten RIAs in total.

### *Institutional arrangement for PIA development*

The ministry that leads the preparation of the bill is the responsible entity for the preparation of the PIA, which must be signed by the minister of the same portfolio SEGPRES and consequently submitted to Congress. For the preparation of the report, the ministries may request the support of their services, especially those whose functions and attributions are directly related to the content of the bill.

Finally, MINECON has the possibility of assisting the various ministries in the preparation of the report. Nonetheless, it will be the Ministry responsible for the productivity report the one that guarantees its elaboration and final content.

Moreover, the government of Chile created a fit-for-purpose inter-ministerial committee that supports the implementation of the Presidential Instructive No. 2 for the PIA process. The committee is led by MINECON and is composed of senior representatives from the ministries involved. The people designated as members of the inter-ministerial committee are mostly economists. These people are the ones in charge of carrying out each ministry's PIA as seen in the table below.

The committee is intended to support the ministries in developing and sharing acquired knowledge throughout the implementation of the presidential instructive. So far, the committee has only met once with the purpose of informing about the introduction of the new policy tool.

**Table 6. Institutions obliged to do PIA and corresponding representatives**

<b>Institution</b>	<b>Representative</b>
Agriculture	Head of the Market Analysis and Sectoral Policies Division
Energy	Head of the Forward Planning and Energy Policy Division
Environment	Head of the Information and Environmental Economics Division
Labour	Ministerial Adviser
Public Works	Ministerial Adviser
Mining	Adviser to the Legal Unit
Transport	Ministerial Adviser
Finance	Adviser to the Macroeconomics Unit
Economy	Chief Economist of the Ministry
SEGPRES	Adviser to the Legal Unit

*Source:* Information provided by the Ministry of Economy, Development and Tourism (June 2017).



### *Scope of the analysis*

As stated before, Presidential Instructive No. 2 states that rules that generate a regulatory impact have to be coupled with a productivity impact assessment, or RIA, that analyses the probable effects of the draft bill; and, if possible, the effects it might have on productivity. The Ministries of Finance, SEGPRES and Economy can determine further exceptions for RIAs.

In case a draft bill introduces a set of different regulatory aspects that are not closely linked, the assessment can analyse a subset of them prioritising the issues with that will possible have larger potential costs and associated benefits or involve a larger amount of stakeholders. The PIAs are drafted by the ministries sponsoring a given regulation and are signed off by the ministers.

Currently the scope includes any regulation stemming from the economic ministries without a specific threshold that allows having differentiated PIAs, e.g. target major regulation for a full-fledged cost-benefit analysis as opposed to a simple checklist depending on the impact of compliance costs.

### *Methodology*

The PIAs are required to be answered in a clear and precise manner according to the topics shown in Box 9. Ministries in charge of the reports shall ensure that they contain the available data and background information that justifies the analysis. In case the data alludes directly or indirectly to fiscal costs, the consistency with the contents of the financial reports, prepared by DIPRES needs to be ensured.

#### **Box 9. Methodology for regulatory impact assessment in Chile**

1. What is the problem in need of solution?
  - a) Identify clearly what problem does the draft bill resolves.
  - b) Make an estimation of the magnitude of the problem, identifying potential affected parties.
  - c) Analyse possible implications derived from not carrying out the actions contained in the draft bill coupled with evidence, if possible.
2. What are the objectives to be reached?
  - d. Identify what is (are) the objective(s) of the draft bill that will allow resolving the stated problem
  - e. Indicate how the draft bill will achieve the objective(s)
  - f. Indicate in which variables will the achievement of the objective(s) will reflect
  - g. Specify in which manner the achievement of the objectives will be measured

**Box 9. Methodology for regulatory impact assessment in Chile** (*cont.*)

- h. Identify obstacles or limitations to reach the expected objectives under the current regulatory framework
  - i. Add a good practices benchmark stemming from other sectors or other countries in the same sector, that will help achieve the expected objective(s).
3. What options or alternatives have been considered?
- j. Indicate if there are any similar public policies in terms of expected objectives currently in force and if potential duplicities are foreseen
  - k. Identify policy alternatives with which that same problem could be addressed and its feasibility
  - l. If practical, describe politics or actions that have been implemented previously with the same objective and flag their shortcomings
  - m. Explain why, and under which criteria is the proposal presented better than the other options
  - n. Identify other public policies with which the proposal presented would need to co-ordinate for a better efficiency in achieving the expected objectives.

**Box 9. Methodology for regulatory impact assessment in Chile** (*cont.*)

4. What are the potential benefits of the draft bill?
- o. Identify and characterise potential beneficiaries of the draft bill. If possible, include an estimate of the quantity of persons, business or organisations will it potentially benefit
  - p. Identify and, if possible, quantify the benefits of the project, direct and indirect. Specially, quantify the following:
    - i. Incentives to innovation and entrepreneurship
    - ii. Incentives to investment
    - iii. Incentives to the efficient use of resources
    - iv. Incentives to labour participation
    - v. Reduction of the time costs for the agents involved
    - vi. Reduction of the financial costs for the agents involved
    - vii. Other relevant elements for the analysis.

Establish how the benefits stated above are distributed among potentially affected stakeholders. The quantification of the potential benefits should be valued in a common metric, for example, in monetary terms. If it is not possible, some kind of quantity or value indicators should be used. In each case, the assumptions used should be explained.

5. What are the potential costs of the draft bill?
- q. Identify and characterise potentially affected stakeholders and, if possible, include an estimate of the number of the potentially affected persons, firms or organisations
  - r. Identify and, if possible, quantify the draft bill costs, both direct and indirect. In particular and, if possible, focus on the following elements:

**Box 9. Methodology for regulatory impact assessment in Chile (cont.)**

- i. Disincentives to innovation and entrepreneurship
- ii. Disincentives to investment
- iii. Disincentives to the efficient use of resources
- iv. Disincentives to labour participation
- v. Increase of the time costs for the agents involved
- vi. Increase of the financial costs for the agents involved
- vii. Other relevant elements for the analysis.

Establish how the costs stated above are distributed among potentially affected stakeholders. The quantification of the potential costs should be valued in a common metric, for example, in monetary terms. If it is not possible, some kind of quantity or value indicators should be used. In each case, the assumptions used should be explained.

*Cost-benefit analysis*

As shown in Box 9, the PIAs need to contain a cost-benefit analysis. This analysis consists of identifying, characterising and, if possible, quantifying all costs and benefits derived from bills (both direct and indirect) for all actors affected by it.

The requirements include: first, identify and characterise the potential affected actors by the draft bill (if possible, estimate the number of people potentially affected). Second, establish and, where possible, quantify the direct and indirect costs and benefits of the project, and how they are distributed among the different actors. Costs and benefits, if possible, should be quantified in a common metric (for example in monetary terms).

The cost-benefit analysis must be prepared by the ministry that proposes the bill; and, if the sponsoring ministry so desires, it can request an opinion from MINECON. The number of units involved will depend on the scope of the project. For example, for the preparation of a bill creating a registry and notarial system, MINECON, the smaller business units, the division of studies of the Division of Trade and Industrial Policy and the Cabinet are involved. However, the preparation of the analysis remains under the responsibility of the unit that produces the report.

For the cost-benefit analysis, the following factors, among others, must be taken into account:

- Incentives / disincentives to innovation and entrepreneurship
- Incentives / disincentives to investment
- Incentives / disincentives to the efficient use of resources
- Incentives / disincentives to labour participation

- Reduction / increase in time and financial costs for the actors involved.

Some other relevant criteria can be used for the cost-benefit analysis. For example, the Ministry of Environment follows a methodology based on cost-benefit analysis including social criteria such as health issues, gender perspective, equity, impact on indigenous communities, etc.

Currently there is no set timeframe / timeline / deadline for the CBA to be done. The latter might be affected by the lack of a regulatory forward planning agenda.

The information considered for the analysis may also come from the financial report prepared by DIPRES or from studies and reports that help to estimate possible costs and benefits of the draft, as comparative experiences. The law also allows conducting surveys or hiring experts to improve the analysis.

The purpose of the cost-benefit analysis is to make the information transparent in order to enrich the discussion, exposing all the costs and benefits associated with a bill for all the potential affected entities. However, the final decision whether or not to implement a regulation is outside the scope of the PIA, which remains only an input to make an informed decision.

### *Non-regulatory alternatives*

The PIAs need to consider all of the non-regulatory alternatives possible. However, there is no guideline or manual that can help public officials consider, or think of, possible alternatives to the regulation. Furthermore, the PIAs are not subject to stakeholder engagement where non-regulatory alternatives might arise from affected parties.

### ***Public consultation and transparency***

Law No. 20 500 on *Associations and Citizen Participation in Public Management* establishes a series of consultation mechanisms for the public consultation in draft laws. However, Law No. 20 500 leaves to the discretion of each public body the criteria to determine what regulations will be submitted to public consultation and under what mechanism. Therefore, ministries are not obliged to submit draft bills to public consultation and in practice they are seldom practiced for primary laws initiated by the Executive power.

Regarding transparency of the PIAs, once the draft bill is sent to the Congress, it is published on its website in order to make the content public. Even when the publication of the PIA is not mandatory, there is currently a banner on the website of MINECON where all the PIAs are made available ([www.economia.gob.cl/informes-de-productividad](http://www.economia.gob.cl/informes-de-productividad)). Furthermore, all draft bills sent to the national congress are public and can be reviewed on the website of the Chamber of Deputies<sup>11</sup> or of the Senate.<sup>12</sup>

### ***Capacity building for regulatory management***

While the inter-ministerial committee can be used to support sponsoring ministries with the implementation of PIA, capacity building or training activities to improve the quality of RIA have not been sought. However, the committee could host training and enable ministries to share methodologies and supporting documents, co-ordinate training actions, support data sharing, and follow up the process evaluation.

### ***Evaluation***

Articles 18 and 19 of Presidential Instructive No. 2 state that after completing six months of the implementation of productivity impact assessments the Ministries of Finance, SEGPRES and MINECON will evaluate its functioning. The evaluation will serve to inform improvements to the Presidential Instructive stated before, including making PIA compulsory for other non-economic ministries. A copy of the evaluation report will be sent to Congress.

11. Website of the Chamber of Deputies,  
[https://www.camara.cl/pley/pley\\_buscador.aspx](https://www.camara.cl/pley/pley_buscador.aspx) (accessed July 2017).
12. Website of the Senate,  
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# Learn more about regulatory policy and governance in Chile





OECD work on regulatory policy:  
<http://oe.cd/regpol>

Ministry of Economy, Development and Tourism of Chile:  
[www.economia.gob.cl/](http://www.economia.gob.cl/)

Productivity impact assessments of Chile  
[www.economia.gob.cl/informes-de-productividad](http://www.economia.gob.cl/informes-de-productividad)

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